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JOINT PETITION OF

BELL ATLANTIC CORPORATION

and

CASE NO. PUC990100

GTE CORPORATION

**For an approval of agreement
and plan of merger**

HEARING EXAMINER'S RULING

August 23, 1999

On August 16, 1999, AT&T Communications of Virginia, Inc. ("AT&T") filed a Motion to Compel and For an Extension of Time to File Testimony. In its Motion, AT&T asks the Commission to compel Bell Atlantic Corporation ("Bell Atlantic") and GTE Corporation ("GTE") to produce information and documents responsive to specified interrogatories served in the captioned proceeding.

Bell Atlantic and GTE filed their Answer on August 19, 1999, and assert that the Motion should be denied.

Petitioners first raise several general objections. AT&T however agrees with two of those objections. AT&T does not object to restricting the production of documents to those maintained in the files of personnel at the level of Director or above, except in situations where Bell Atlantic or GTE has reason to believe that the information is held by a Manager.¹ Similarly, AT&T does not object to withholding responsive documents that were created by parties not affiliated with Bell Atlantic or were not acting under its direction in creating those documents.² Further, AT&T did not argue that a third objection based on privilege was improper, but only sought a log identifying documents withheld on the basis of privilege. Petitioners advised that such a log has now been provided.³

Thus the remaining general objection is to production of documents that are not related to the market for telecommunications services in Virginia. AT&T seeks a log of any such documents that may be responsive to its interrogatories.⁴ Such a log is not

¹Motion at 5.

²Id. at 6.

³Answer at 13-14.

⁴Motion at 6.

necessary. If documents are not related to the market for telecommunications in Virginia, they are most certainly not relevant to this proceeding.

Turning to the specific requests at issue, AT&T first seeks financial records relating to assets and other data contained in the Bell Atlantic ARMIS 43-01 Report to the Federal Communications Commission. From the AT&T Interrogatories and Request for Production of Documents (Second Set) to Bell Atlantic, AT&T seeks responses to the following:

Request No. 1

Please describe the nature of plant assets reported on the Other Jurisdictional Assets line in the State Column of the BA-Virginia ARMIS 43-01 Report to the FCC. Please explain why such assets are negative since 1993. Please provide an example of the accounting entry that creates these negative assets.

Request No. 2

Please describe the nature of assets reported on the Total Other Investments line in the State Column of the ARMIS 43-01 Report to the FCC. Please explain why such assets are negative in 1996, 1997 and 1998. Please provide an example of the accounting entry that creates these negative assets.

Request No. 3

Please explain the increase in Federal Income Taxes line in the State Column of the BA-Virginia ARMIS 43-01 Report to the FCC during the periods 1996-1998.

Request No. 4

A review of the data in the Unregulated Column of BA-Virginia's ARMIS 43-01 Report to the FCC appears to indicate that BA's unregulated operations in Virginia operated at a loss (revenues minus expenses results in a negative) in 1997 and 1998. Please explain this situation and explain how long this situation is expected to continue.

Petitioners argue that financial records are not relevant because the statutory standard applicable to this case imposes no obligation on the Commission to determine if rates charged today are just and reasonable based on a review of earnings on jurisdictional rate base. They argue that they are subject instead to a modified form of regulation that will continue in place following the merger and further, assert that they will continue to operate as separate entities after the merger. Thus they assert that the merger will not affect their existing rates except to the extent they voluntarily reduce their rates or

maintain existing rate caps. Petitioners also assert that questions related to the financial data of non-regulated operations are even less relevant because the Commission does not even control rates for those services.⁵

Rule 6:4 of the Commission's Rules of Practice and Procedure establishes an extremely broad standard for discovery.

Interrogatories may relate to any matter, not privileged, which is relevant to the subject matter involved. . . .It is not necessarily grounds for objection that the information sought will be inadmissible at the hearing if such information appears reasonably calculated to lead to the discovery of admissible evidence.

As Petitioners acknowledge, anything that is not privileged that is calculated to lead to the discovery of admissible evidence is subject to discovery.⁶ Although the Commission may limit its determination to the effects of the merger on competition in Virginia, information related to the financial condition of the Petitioners could be calculated to lead to the discovery of admissible evidence relevant to a determination on whether the merger will affect adequate service to the public at just and reasonable rates. The Commission did not limit its consideration to only regulated service, and further, even losses in unregulated service could impact regulated service. Petitioners will therefore be compelled to respond to Request Nos. 1 through 4.

AT&T also seeks copies of certain financial reports filed with the Commission for 1996, 1997 and 1998, and the associated workpapers. Also from the Second Set to Bell Atlantic, AT&T seeks:

Request No. 5

Please provide a copy of the following BA-VA quarterly (to the extent available) and annual financial reports to the State Corporation Commission for the years 1996, 1997 and 1998 as required by BA-VA's Plan for Alternative Regulation: (a) the FCC/SCC Form M; (b) the "Virginia company... rate-of-return statement that provides financial data on a total-Virginia, total-service basis, and on a Virginia-intrastate, total-service basis;" (c) the "13-month average capital structure statement; and (d) the "13-month average rate base statement." Please provide a copy of all work papers used to prepare these reports.

In addition to the objection that such financial information is not relevant, Bell Atlantic asserts that providing the workpapers would be unduly burdensome. As discussed above, financial information related to regulated operations may be calculated to lead to the

⁵Answer at 2-3.

⁶Id. at 1.

discovery of relevant and admissible evidence. Moreover, if the workpapers are so voluminous as to be burdensome to copy and produce, Bell Atlantic can make them available for AT&T to review.

Finally and also from Bell Atlantic, AT&T seeks information relating to Bell Atlantic's transfer of assets and liabilities associated with its directory publishing services to a subsidiary, as reported to the Securities and Exchange Commission in 1997.

Request No. 9

On page F-9 of the Bell Atlantic-Virginia 1997 Report 10K to the SEC BA-VA reported, "On January 1, 1997, the Company transferred, at net book value without gain or loss, certain assets and liabilities associated with its directory publishing activities to a newly formed, wholly owned subsidiary." Please answer the following questions about this transaction:

- (a) What is the name of this new directory publishing subsidiary? Is it a subsidiary of Bell Atlantic-Virginia or Bell Atlantic Corporation?
- (b) Please provide, in standard organizational chart format, the relationship of this new subsidiary to Bell Atlantic Corporation and BA-VA.
- (c) Provide all documents that you filed with the Virginia State Corporation Commission in which you sought authority to transfer these assets.
- (d) Please provide the case number of this application.
- (e) Please provide a copy of the order or other decision of the State Corporation Commission authorizing the transfer of these assets.

In support of this request AT&T argues that it is relevant for it to explore "whether and to what extent the Commission has considered the spin-off of directory publishing upon the justness and reasonableness" of Bell Atlantic's rates.⁷ I find it is not relevant to the present consideration of the merger to determine if the Commission properly considered the spin-off two years ago.

⁷Motion at 7.

AT&T also seeks responses from GTE to the following Interrogatories (First Set):

Request No. 9

By each type of service, state the amount of revenues received by GTE or its subsidiaries or affiliates per month and per year from customers in Bell Atlantic's and GTE South's territory in Virginia from the interLATA services provided by GTE or its subsidiaries or affiliates.

Petitioners again argue that financial information is not relevant, this request is overly broad and unduly burdensome, and further that the information sought is competitively sensitive. First, they argue that the service and rates that the Commission will review are those of the regulated company, GTE South. They argue that customer and revenue information from non-regulated GTE entities providing interLATA services is not relevant to the inquiry in this case. Moreover, Petitioners argue that the merger will not be consummated unless local calling across LATA boundaries can continue and thus it is unnecessary to quantify the impact of the cessation of local calling plans. I disagree. The Commission is concerned with the continuation of interLATA local calling and interLATA interexchange service offered to Virginia customers.⁸

Petitioners, however, next argue that the information is competitively sensitive. They argue that interLATA services offered by GTE South include local calling plans and SS7 service. Although GTE provided the number of customers participating in the local calling plans, it did not provide revenue information because revenues are not separately identified as requested. GTE also asserts that it did not provide customer or revenue information for SS7 service because the small number of customers would have made the information too revealing.⁹

Here a balance must be struck between the injury which may result from disclosure of sensitive information to a competitor and the relevance of the information to the proceeding. Here the balance warrants withholding information about SS7 service.

Petitioners also argue that responding to this request would require GTE to incur an undue burden to compile information that it does not keep. They assert that GTE subsidiaries do not record information on an intraLATA and interLATA basis by ILEC service areas.¹⁰ The Commission's discovery rules do not require parties to provide data in a form not readily available. However, GTE should have the information in some form. For example, it is likely that the information is organized geographically, based on how its system is deployed. Therefore, I will compel production of the 1998 level of revenue

⁸ *Joint Petition of Bell Atlantic Corporation and GTE Corporation*, Case No. PUA980031, Final Order at 20 (March 31, 1999).

⁹ Answer at 9.

¹⁰ Answer at 11.

received by GTE from local calling plans in whatever geographic areas the information is kept. The response should define the geographic boundaries and certainly should be subject to the Commission's Protective Order.

AT&T next seeks financial information from GTE on unregulated operations. Specifically from its Interrogatories (Second Set):

Request No. 1

A review of the data in the Unregulated Column of GTE's ARMIS 43-01 Report to the FCC for Virginia appears to indicate that GTE's unregulated operations in Virginia have been operating at a loss (revenues minus expenses results in a negative) since 1992. Please explain this situation and explain how long this situation is expected to continue.

The Petitioners assert this information is irrelevant. As discussed above, however, it can lead to the discovery of admissible evidence.

Finally, AT&T seeks financial information from GTE related to regulated activities.

Request No. 4

Please provide a copy of the annual financial reports filed by GTE for its operations in Virginia with the State Corporation Commission, for the years 1996, 1997 and 1998, along with all work papers used in the preparation of these reports.

Petitioners assert that this information is irrelevant and also that providing workpapers would be unduly burdensome. This information is relevant. Further, if the workpapers are so voluminous, GTE can simply make the papers available for review. Accordingly,

IT IS DIRECTED THAT:

On or before August 25, 1999, Petitioners are compelled to produce answers to the requested interrogatories, except for: (i) Request No. 9 to Bell Atlantic addressing the spin-off of directory assistance in 1997, and (ii) Request No. 9 to GTE, for which Petitioners are compelled to provide only the information described more fully above.

Deborah V. Ellenberg
Chief Hearing Examiner